

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of		
Federal-State Joint Board on Universal Service		CC Docket No. 96-45
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms		CC Docket No. 98-171
Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.		CC Docket No. 97-21

**COMMENTS OF AT&T CORP.**

Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, AT&T Corp. ("AT&T") submits these comments on the applications for review of the Wireline Competition Bureau's ("WCB" or "Bureau") Order, DA 04-3669, released December 9, 2004 ("*Form 499-A Modification Order*"), in the above proceedings. The following parties sought review by the full Commission on January 10, 2005: Business Discount Plan, Inc. ("BDP"), Qwest Communications International, Inc. ("Qwest") and SBC Communications, Inc. ("SBC").<sup>1</sup>

In the *Form 499-A Modification Order*, the WCB adopted a firm 12-month deadline from the due date of the original filing for submitting revisions to the annual

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<sup>1</sup> On the same day, Sprint Corporation ("Sprint") filed a petition for reconsideration of the *Form 499-A Modification Order*.

Telecommunications Reporting Worksheet (“Worksheet” or “Form 499-A”), if the revision would *decrease* regulatory fees or contributions to support mechanisms for universal service, interstate Telecommunications Relay Service, number administration, or local number portability. The Bureau describes this modification as a procedural, non-substantive change that will improve “administrative efficiency and certainty” and “ensure stability and sufficiency” of those programs. *Form 499-A Modification Order* ¶ 10. While limiting the time frame for carriers to file revisions that would *reduce* their contributions, the Bureau did not impose any such limitation on the duty of carriers to update their Forms 499-A if the update would result in increased contributions.

This asymmetry is in sharp contrast to how these programs had previously been administered. Prior to the *Form 499-A Modification Order*, a contributor was required to submit by December 1 of the filing year a revised Form 499-A if it discovered errors, *irrespective* of whether the error would result in reduced or increased contributions. Revised forms filed after December 1 required an explanation for the revision along with documentation of how the revised figures were derived from corporate financial records. In the *Form 499-A Modification Order*, the Bureau did not explain why it limited the “firm” deadline for filing revised Forms 499-A only to those that would *reduce* contributions. Nor did the Bureau explain why the same considerations would not apply to revisions that would increase a carrier’s contributions.

The purpose of requiring amended Forms 499-A is to ensure that interstate telecommunications providers contribute appropriate amounts to these various support

programs.<sup>2</sup> Even assuming that the Bureau had authority to adopt this asymmetrical rule, it is wholly arbitrary and capricious – because it is inconsistent with this fundamental goal of accuracy.

As several parties point out, the asymmetrical deadline or “one-way ratchet” could result in carriers being compelled to make erroneous and excessive USF payments, contrary to the goal of accuracy and Section 254’s equitable and nondiscriminatory requirement. BDP at 22; Qwest at 6, 8, 17; SBC at 10. As SBC (at 11) explains, “[i]t is patently unfair to require a carrier to revise its Form 499-A more than one year past the original filing deadline if it would increase that carrier’s contribution obligation, while strictly limiting the same carrier’s ability to obtain a refund of overpayments . . . .” This lopsided regime will likely result in competitive distortions by allowing “carriers only one year to correct mistakes in a Worksheet that will lead to a refund of overpayments, but hold them forever liable for errors that result in an underpayment . . . .” Qwest at 6. Moreover, the absolute 12-month deadline regardless of the size of the overpayment that a carrier may seek to have refunded further exacerbates its inequity. *Id.* at 17.

As Qwest demonstrates, none of the Bureau’s purported justifications for the one-sided rule has merit. *Administrative efficiency* is not likely to be significantly furthered given the substantial USAC workload and the relatively small number of revised Forms 499-A

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<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24,952, ¶¶ 34, 36 (2002) (“*Interim USF Order*” and “*USF Contribution SFNPRM*”); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Petition for Reconsideration filed by AT&T, Report and Order and Order on Reconsideration, 16 FCC Rcd. 5748, ¶ 12 (2001) (“*6 Month Lag Order*”).

modifications seeking downward revisions filed more than 12 months from the original due date. *Id.* at 12. *Certainty* is not advanced because, although there are fluctuations in the support payments, they are primarily due to changes in the contribution base resulting from increased wireless and Internet usage, reduced wireline long distance usage and lower rates, and new packages of services. *Id.* at 13. *Incentives for accuracy* are not necessary because carriers do not have any incentive to overpay, particularly because USAC does not pay interest on overpayments. *Id.* at 14. Thus, carriers already have a strong incentive to pay the appropriate amount and to submit a revised Form 499-A for overpayments. *Id.*

If the Commission believes “a firm deadline is necessary to promote efficiency and ensure the stability of federal support mechanisms, then such a deadline should apply to *all* revisions – irrespective of whether it would increase or decrease a carrier’s contributions.” SBC at 11 (emphasis added). The IRS, which has as much of an interest in ensuring accuracy of tax payments as the FCC does in ensuring accuracy of support contributions, has a symmetrical 3-year rule for a taxpayer to file an amended corporate tax return in order to obtain a refund of an overpayment or for the Service to challenge the validity of the original return. Sprint at 2, *citing* 26 U.S.C. §§ 6501, 6511; Qwest at 6, 16.

AT&T agrees with BDP, Qwest, SBC and Sprint that whatever time limitations may be appropriate with respect to filing of revised Forms 499-A, it must apply to *all* such revisions irrespective of whether they would increase or decrease a carrier’s contribution to support programs. Basic equitable considerations require this result to ensure that carriers do not overpay simply because they are time-barred from filing a revised Worksheet for refunds, while being held liable for revisions that would result in increased contributions.

In sum, a symmetrical rule that imposes the *same* time period for a carrier to file a revised Form 499-A that would reduce contributions as for a revision that would increase

contributions is the only scheme that will avoid the harsh, inequitable impact of the rule that the Bureau has adopted and effectuate the goal of accuracy.

Accordingly, if the Commission believes that a firm deadline is necessary or desirable for filing revised Forms 499-A, it should adopt a rule that imposes the same time limit on all such revisions, irrespective of whether they would result in reduced or increased contributions to its programs.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 25th day of January, 2005, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, on the parties named below.

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